

AMENDED IN ASSEMBLY AUGUST 25, 2000

AMENDED IN SENATE APRIL 27, 2000

AMENDED IN SENATE APRIL 6, 2000

SENATE BILL

No. 1866

Introduced by Senator Vasconcellos

February 24, 2000

An act to amend Sections 11471, 11489, and 11495 of, to add Sections 11471.2 and 11471.3 to, and to amend and renumber Section 11471.5 of, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1866, as amended, Vasconcellos. Controlled substances: asset forfeiture: substance abuse treatment.

Existing law provides that in all cases where property used or intended to be used to facilitate any violation of specified controlled substance offenses is seized and forfeited to a state or local governmental entity and, where necessary, sold, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity to specified persons or entities for specified purposes, including for the purpose of combating drug abuse.

Existing law, the Uniform Controlled Substances Act, includes provisions authorizing the seizure and forfeiture of property involved in, or purchased with the proceeds from, a controlled substance offense.

This bill would provide that property is deemed to be seized whenever any agency takes possession or control of it. The bill

would add provisions that provide that seizing agencies or prosecuting attorneys authorized to bring civil forfeiture proceedings shall not directly or indirectly transfer seized property, including any property seized by state or local law enforcement officers who are detached to, deputized or commissioned by, or working in conjunction with a federal agency, to any federal agency or any governmental entity not created under and subject to state law, unless the court enters an order, as specified, authorizing the property to be transferred. The bill would provide that any agent, including any state law enforcement officer who is detached to, deputized or commissioned by, or working in conjunction with a federal agency, who knowingly transfers or otherwise trades seized property in violation of this provision is guilty of a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program upon local governments.

~~Existing law provides that in all cases where the property is seized and forfeited to the state or local governmental entity and, where necessary, sold, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity, as specified, for specified purposes, including a fund used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity, which programs shall involve specified entities, including uniformed law enforcement officers. Existing law further provides that it is the intent of the Legislature to cause the development and continuation of positive intervention programs for high risk elementary and secondary schoolage students, and that local law enforcement should work in partnership with state and local agencies and the private sector in administering these programs. Existing law provides that the actual distribution of these funds is to be determined by a panel consisting of the sheriff of the county, a police chief selected by the other chiefs in the county, and the district attorney and the chief probation officer of the county.~~

~~This bill would provide that this fund shall instead be used for the sole purpose of funding programs designed to prevent and treat drug abuse, and would delete uniformed law enforcement officers from the specified involved entities. The~~



~~bill would revise the above intent provision to, in addition, provide that it is the intent of the Legislature to cause the development and continuation of positive intervention programs for expanding drug treatment services for juveniles and adults, and to delete the language regarding local law enforcement working in partnership with state and local agencies and the private sector in administering these programs. This bill would provide that the actual distribution of these funds is to be determined, instead, by the county's department of alcohol and drug services. By imposing new duties on local agencies, the bill would impose a state-mandated local program.~~

Existing law provides that a specified amount shall be deposited to the General Fund, and that commencing January 1, 1995, all moneys so deposited, in an amount not to exceed \$10,000,000, shall be made available for school safety and security, upon appropriation by the Legislature, and shall be disbursed, as specified.

This bill would instead provide that a specified amount shall be deposited to the General Fund, and that commencing January 1, 2001, all moneys so deposited shall be made available for drug prevention and treatment services, upon appropriation by the Legislature.

Existing law provides that each year the Attorney General shall publish a report that sets forth specified information regarding forfeiture actions.

This bill would provide that the report shall be published in book form and made publicly accessible by electronic means and shall include other specified information.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11471 of the Health and Safety
2 Code is amended to read:
3 11471. Property is deemed to be seized whenever any
4 agency takes possession or control of it. Property subject
5 to forfeiture under this division may be seized by any
6 peace officer upon process issued by any court having
7 jurisdiction over the property. Seizure without process
8 may be made if any of the following situations exist:
9 (a) The seizure is incident to an arrest or a search
10 under a search warrant.
11 (b) The property subject to seizure has been the
12 subject of a prior judgment in favor of the state in a
13 criminal injunction or forfeiture proceeding based upon
14 this division.
15 (c) There is probable cause to believe that the
16 property is directly or indirectly dangerous to health or
17 safety.
18 (d) There is probable cause to believe that the
19 property was used or is intended to be used in violation
20 of this division.
21 (e) Real property subject to forfeiture may not be
22 seized, absent exigent circumstances, without notice to
23 the interested parties and a hearing to determine that
24 seizure is necessary to preserve the property pending the

1 outcome of the proceedings. At the hearing, the
2 prosecution shall bear the burden of establishing that
3 probable cause exists for the forfeiture of the property
4 and that seizure is necessary to preserve the property
5 pending the outcome of the forfeiture proceedings. The
6 court may issue seizure orders pursuant to this section if
7 it finds that seizure is warranted or pendente lite orders
8 pursuant to Section 11492 if it finds that the status quo or
9 value of the property can be preserved without seizure.

10 (f) Where business records are seized in conjunction
11 with the seizure of property subject to forfeiture, the
12 seizing agency shall, upon request, provide copies of the
13 records to the person, persons, or business entity from
14 whom such records were seized.

15 SEC. 2. Section 11471.2 is added to the Health and
16 Safety Code, to read:

17 11471.2. (a) Any property seized by state or local law
18 enforcement officers who are detached to, deputized or
19 commissioned by, or working in conjunction with a
20 federal agency shall remain subject to the provisions of
21 this section.

22 (b) Seizing agencies or prosecuting attorneys
23 authorized to bring civil forfeiture proceedings under
24 this chapter shall not directly or indirectly transfer seized
25 property to any federal agency or any governmental
26 entity not created under and subject to state law, unless
27 the court enters an order, upon petition of the
28 prosecuting attorney, authorizing the property to be
29 transferred.

30 (c) The court may not enter an order authorizing a
31 transfer unless one of the following conditions exists:

32 (1) It reasonably appears that the activity giving rise
33 to the investigation or seizure is interstate in nature and
34 sufficiently complex to justify a transfer.

35 (2) The seized property may only be forfeited under
36 federal law.

37 (3) Pursuing forfeiture under state law would unduly
38 burden prosecuting attorneys or state law enforcement
39 agencies.

~~(d) The court may refuse to enter an order authorizing a transfer to the federal government if the transfer would circumvent the protections of the California Constitution or this chapter that would otherwise be available to the property owner.~~

~~(e)~~

(d) Prior to entering any order to transfer property pursuant to this section, the court shall provide the owner of the property a right to be heard with respect to that transfer.

SEC. 3. Section 11471.3 is added to the Health and Safety Code, to read:

11471.3. Any agent, including any state law enforcement officer who is detached to, deputized or commissioned by, or working in conjunction with a federal agency, who knowingly transfers or otherwise trades seized property in violation of Section 11471.2 is guilty of a misdemeanor.

SEC. 4. Section 11471.5 of the Health and Safety Code is amended and renumbered to read:

11471.1. A peace officer making a seizure pursuant to Section 11471 shall notify the Franchise Tax Board where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars (\$5,000).

SEC. 5. Section 11489 of the Health and Safety Code is amended to read:

11489. Notwithstanding Section 11502 and except as otherwise provided in Section 11473, in all cases where the property is seized pursuant to this chapter and forfeited to the state or local governmental entity and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to that person.

(b) The balance, if any, to accumulate, and to be distributed and transferred quarterly in the following manner:

(1) To the state agency or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary costs of notice required by Section 11488.4, and for any necessary repairs, storage, or transportation of any property seized under this chapter.

(2) The remaining funds shall be distributed as follows:

(A) Sixty-five percent to the state, local, or state and local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.

~~(i) Fifteen percent of the funds distributed pursuant to this subparagraph shall be deposited in a special fund maintained by the county, city, or city and county of any agency making the seizure or seeking an order for forfeiture. This fund shall be used for the sole purpose of funding programs designed to prevent and treat drug abuse, and shall wherever possible involve educators, parents, community-based organizations, and local businesses. Those programs that have been evaluated as successful shall be given priority. These funds shall not be used to supplant any state or local funds that would, in the absence of this clause, otherwise be made available to the programs.~~

~~It is the intent of the Legislature to cause the development and continuation of positive intervention programs for high-risk elementary and secondary schoolage students, and for expanding drug treatment services for juveniles and adults.~~

~~(ii) The actual distribution of funds set aside pursuant to clause (i) is to be determined by the county's department of alcohol and drug services.~~

(i) Fifteen percent of the funds distributed pursuant to this subparagraph shall be deposited in a special fund maintained by the county, city, or city and county of any agency making the seizure or seeking an order for forfeiture. This fund shall be used for the sole purpose of

1 *funding programs designed to combat drug abuse and*
2 *divert gang activity, and shall wherever possible involve*
3 *educators, parents, community-based organizations and*
4 *local businesses, and uniformed law enforcement officers.*
5 *Those programs that have been evaluated as successful*
6 *shall be given priority. These funds shall not be used to*
7 *supplant any state or local funds that would, in the*
8 *absence of this clause, otherwise be made available to the*
9 *programs.*

10 *It is the intent of the Legislature to cause the*
11 *development and continuation of positive intervention*
12 *programs for high-risk elementary and secondary*
13 *schoolage students. Local law enforcement should work*
14 *in partnership with state and local agencies and the*
15 *private sector in administering these programs.*

16 *(ii) The actual distribution of funds set aside pursuant*
17 *to clause (i) is to be determined by a panel consisting of*
18 *the sheriff of the county, a police chief selected by the*
19 *other chiefs in the county, and the district attorney and*
20 *the chief probation officer of the county.*

21 (B) Ten percent to the prosecutorial agency which
22 processes the forfeiture action.

23 (C) Twenty-four percent to the General Fund.
24 Notwithstanding Section 13340 of the Government Code,
25 the moneys are hereby continuously appropriated to the
26 General Fund. Commencing January 1, 2001, all moneys
27 deposited in the General Fund pursuant to this
28 subparagraph shall be made available for drug
29 prevention and treatment services, upon appropriation
30 by the Legislature.

31 (D) One percent to a private nonprofit organization
32 composed of local prosecutors which shall use these funds
33 for the exclusive purpose of providing a statewide
34 program of education and training for prosecutors and
35 law enforcement officers in ethics and the proper use of
36 laws permitting the seizure and forfeiture of assets under
37 this chapter.

38 (c) Notwithstanding Item 0820-101-469 of the Budget
39 Act of 1985 (Chapter 111 of the Statutes of 1985), all funds
40 allocated to the Department of Justice pursuant to

subparagraph (A) of paragraph (2) of subdivision (b) shall be deposited into the Department of Justice Special Deposit Fund—State Asset Forfeiture Account and used for the law enforcement efforts of the state or for state or local law enforcement efforts pursuant to Section 11493.

All funds allocated to the Department of Justice by the federal government under its Federal Asset Forfeiture program authorized by the Comprehensive Crime Control Act of 1984 may be deposited directly into the Narcotics Assistance and Relinquishment by Criminal Offender Fund and used for state and local law enforcement efforts pursuant to Section 11493.

Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund—Federal Asset Forfeiture Account.

(d) All the funds distributed to the state or local governmental entity pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (b) shall not supplant any state or local funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of these agencies.

The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in this section.

For the purposes of this section, “local governmental entity” means any city, county, or city and county in this state.

SEC. 6. Section 11495 of the Health and Safety Code is amended to read:

11495. (a) The funds received by the law enforcement agencies under Section 11489 shall be deposited into an account maintained by the Controller, county auditor, or city treasurer. These funds shall be distributed to the law enforcement agencies at their request. The Controller, auditor, or treasurer shall maintain a record of these disbursements which records shall be open to public inspection, subject to the privileges contained in Sections 1040, 1041, and 1042 of the Evidence Code.

1 (b) Upon request of the governing body of the
2 jurisdiction in which the distributions are made, the
3 Controller, auditor, or treasurer shall conduct an audit of
4 these funds and their use. In the case of the state, the
5 governing body shall be the Legislature.

6 (c) Each year, the Attorney General shall publish a
7 report, in book form and made publicly accessible by
8 electronic means, which sets forth the following
9 information for the state, each county, each city, and each
10 city and county:

11 (1) The number of forfeiture actions initiated.

12 (2) The number of cases and the administrative
13 number or court docket number of each case for which
14 forfeiture was ordered or declared.

15 (3) The value of the assets forfeited.

16 (4) The recipients of the forfeited assets, the amounts
17 received, and the date of the disbursement.

18 (5) A complete description by the recipients of
19 forfeited assets of the purposes for which all forfeited
20 assets were designated or used, and the dates of all
21 disbursements for each purpose.

22 (6) The number of forfeiture actions initiated under
23 federal law in which a state or local agency had a role, and
24 a description of the role served in each federal forfeiture
25 action by each participating state or local agency. The
26 description shall include, but not be limited to, the
27 following information:

28 (A) The date of the seizure; the date of transfer of the
29 case from state or local authorities to federal authorities,
30 if applicable; and the date on which forfeiture was
31 ordered or declared.

32 (B) The case number assigned to each federal
33 forfeiture action by federal authorities, if known, or, if the
34 case number is not known, other identifying information
35 about the case.

36 (C) Whether the state or local agency originated
37 information leading to a seizure or federal forfeiture
38 action.



(D) Whether the state or local agency supplied unique or indispensable assistance to the federal forfeiture action, and a description of the assistance.

(E) The number of hours expended by the state or local agency on the case.

(F) Whether a federal agency has classified the federal forfeiture case as a “joint” seizure and forfeiture action, or as an “adoption” by federal authorities of a case initiated by a state or local agency, if that federal classification is known.

(7) The value of assets forfeited under federal law in each case in which a state or local agency had a role.

(8) The value of all shares of assets forfeited under federal law that are returned to a state or local agency that had a role in the federal forfeiture action, and the date of receipt of the shares.

(9) A complete description by state and local agencies that receive assets forfeited under federal law of the purposes for which all the forfeited assets were designated or used, and the dates of all disbursements for each purpose.

(d) The Attorney General shall develop administrative guidelines for the collection and publication of the information required in subdivision (c).

(e) The Attorney General’s report shall cover the calendar year and shall be made no later than March 1 of each year beginning with the year after the enactment of this law.

~~SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

1 However, ~~notwithstanding Section 17610 of the~~
2 ~~Government Code, if the Commission on State Mandates~~
3 ~~determines that this act contains other costs mandated by~~
4 ~~the state, reimbursement to local agencies and school~~
5 ~~districts for those costs shall be made pursuant to Part 7~~
6 ~~(commencing with Section 17500) of Division 4 of Title~~
7 ~~2 of the Government Code. If the statewide cost of the~~
8 ~~claim for reimbursement does not exceed one million~~
9 ~~dollars (\$1,000,000), reimbursement shall be made from~~
10 ~~the State Mandates Claims Fund.~~

11 *SEC. 7. No reimbursement is required by this act*
12 *pursuant to Section 6 of Article XIII B of the California*
13 *Constitution because the only costs that may be incurred*
14 *by a local agency or school district will be incurred*
15 *because this act creates a new crime or infraction,*
16 *eliminates a crime or infraction, or changes the penalty*
17 *for a crime or infraction, within the meaning of Section*
18 *17556 of the Government Code, or changes the definition*
19 *of a crime within the meaning of Section 6 of Article*
20 *XIII B of the California Constitution.*